No. 763

IN THE

SUPREME COURT OF THE UNITED STATES

J. M. CHANDLER, *Petitioner*

vs.

J. O. JEROME BROWN, ET AL, *Respondents*

REPLY OF J. O. BROWN Deceased

TO PETITION FOR WRIT OF CERTIORARI

BEVERLY TARPLEY
DAVIS SCARBOROUGH
SCARBOROUGH, BLACK & TARPLEY
Box 356, Abilene, Texas

Counsel for Respondent,
J. O. Jerome Brown
deceased

No. 763

IN THE

SUPREME COURT OF THE UNITED STATES

• • •

J. M. CHANDLER, *Petitioner*

vs.

J. O. (JEROME) BROWN, ET AL, *Respondents*

• • •

REPLY OF J. O. BROWN (Deceased)

TO PETITION FOR WRIT OF CERTIORARI

• • •

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

In reply to the petition for writ of certiorari filed herein, respondent, J. O. Brown (deceased) says that same should be denied:

(1) Final Judgment of State Court on same identical cause of action *RES JUDICATA*. This case was filed by petitioner on 22 April 1955. Prior thereto, and on 14 December 1951, petitioner had filed the same identical alleged cause of action in the District Court of Midland County, Texas. A judgment in said State Court suit becoming final long prior to the entry of the judgment in this case (certiorari denied in State Court suit, *Chandler*

vs. Brown, 78 Sup. Ct. Rep. 773, 356 U. S. 930). Under the well settled principles of res judicata as announced by this Court in *Commissioner of Internal Revenue vs. Sunnen*, 68 S. Ct. 715, 333 U. S. 591, 92 L. Ed. 838, the final judgment in the State Court was res judicata.

(2) If petitioner had any cause of action, it was barred by limitation laches and stale demand.

(3) There is no diversity of citizenship in this cause.

(4) Since no new parties were made within two years after death of J. O. Brown, dismissal was mandatory. *Anderson vs. Yunghkua, et al*, 329 U. S. 482, 67 S. Ct. 428, 91 L. Ed. 436.

WHEREFORE, respondent, J. O. Brown (deceased), prays that said petition for certiorari be denied.

Respectfully submitted,

DAVIS SCARBOROUGH

SCARBOROUGH, BLACK & TARPLEY

Counsel for Respondent,
J. O. (Jerome) Brown
(deceased)

By Davis Scarborough

I hereby certify that a copy of the above reply has been served upon J. M. Chandler, Box 2018, Fort Worth, Texas, and Joseph F. Leonard, Jr., Box 1046, Kerrville, Texas, counsel of record for petitioner, by depositing same in the United States mail to said addresses this 20 day of March, 1961, in accordance with Paragraph 1 of Rule 33 of the Supreme Court Rules.

James Kavanaugh

Attorney For Respondent,
J. O. Brown (deceased)

No. 763

In the

Supreme Court of the United States

OCTOBER TERM, 1960

J. M. CHANDLER,

Petitioner,

v.

J. O. JEROME BROWN, ET AL.,

Respondents.

REPLY OF DARYL DAVIS, D. A. ROSS, EL CAPITAN OIL COMPANY AND LONE STAR PRODUCING COMPANY TO PETITION FOR CERTIORARI

SUTHERLAND, McRAE, STACY & LAUGHLIN,
Of Counsel,
P. O. Box 670, Midland, Texas

No. 763

In the

Supreme Court of the United States

OCTOBER TERM, 1960

J. M. CHANDLER,

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J. O. (JEROME) BROWN, *et al.*,

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REPLY OF DARYL DAVIS, D. A. ROSS, EL CAPITAN OIL COMPANY AND LONE STAR PRODUCING COMPANY TO PETITION FOR CERTIORARI

To the Honorable Judges of Said Court:

At the outset, the Court should refer to the Petition for Certiorari in No. 814, in the October, 1957 Term, said case having the same style as this case, being a Petition for Writ of Certiorari to the Court of Civil Appeals of Texas, which was denied. *356 U. S. 930, 78 S. Ct. 773.*

Reference to the Reply to the Petition for Certiorari in the above case will show on pages 2, 3 and 4 a chronological summary of the events and legal proceedings in issue. Par-

ticularly it will show that on April 26, 1955, the Petitioner herein filed in the District Court of Midland County, Texas, his First Amended Original Petition seeking, among other things, a decree establishing the contents of a lost deed alleged to have been executed in 1931 and never recorded, and alleged to convey to him the mineral interest in controversy.

The Transcript of the Record in this case will show that contemporaneously therewith Petitioner filed the same identical pleading and cause of action in the United States District Court for the Western District of Texas, Pecos Division, it being No. 2283, in said court.

Thus, both cases were pending in the State and Federal courts at the same time, asserting the same cause of action based on the same allegations.

While the two cases were thus pending, the District Court of Midland County, Texas, on February 3, 1956, rendered a summary judgment against this Petitioner, holding that his cause of action was in essence a *personal* cause of action to establish the contents of a lost deed, and that it was barred by the 4-year Statute of Limitations of Texas, Article 5529, Revised Civil Statutes, 1925, as well as the doctrine of laches and stale demand.

This judgment was appealed to the Court of Civil Appeals of Texas where Petitioner urged that his was a cause of action to recover real estate and not within the scope of Article 5529 nor the doctrine of laches or stale demand. The Texas Court of Civil Appeals held to the contrary and af-

firmed the judgment of the trial court. *Chandler v. Brown, 301 S. W. 2d 720.*

Upon refusal by the Supreme Court of Texas of an Application for Writ of Error, Petitioner filed at the October, 1957 Term his Petition in No. 814, claiming that his constitutional rights had been violated by rendition of a summary judgment without a jury trial and because of the claimed misapplication of the 4-year Statute of Limitations by the Texas appellate courts. This Petition was denied by this Court. *356 U. S. 930, 78 S. Ct. 773.*

Based on this final ruling and order, Respondents filed in the United States District Court for the Western District of Texas a Motion to Dismiss which was effective, under Rule 12, as a motion for summary judgment, asserting that the decisions of the Texas court were res adjudicata of all claims and causes of action being asserted in the United States District Court and supported by certified copies of the pleadings, judgments, orders and decrees of the Texas courts so showing.

This Motion was granted by the District Judge and this action was affirmed by the Court of Appeals for the Fifth Circuit, *Chandler v. Brown, 282 F. 2d 186.*

The present Petition brings to this Court for the second time the claim that Petitioner's constitutional rights have been denied him by the action of the State courts. The State courts have held that the 4-year Statute of Limitations and doctrine of laches and stale demand bar Petitioner's suit, and this is a matter within the jurisdiction of those courts.

Those judgments are therefore final and binding on all claims and causes of action asserted in the United States District Court *(Commissioner of Internal Revenue v. Sunnen, 333 U. S. 591)* and his constitutional rights have not been denied him by what he claims was an error or law in the State courts. That his constitutional rights have not been violated has already been specifically determined by this Court in its prior refusal of certiorari. *356 U. S. 930, 78 S. Ct. 773.*

Therefore,—

(a) The State court decisions are res adjudicata of the merits of Petitioner's alleged cause of action, and

(b) This Court's prior refusal of certiorari is res adjudicata of the supposed constitutional questions.

There is, therefore, nothing left to decide and Respondents respectfully urge that the present Petition be in all things denied.

Respectfully submitted,

BOYD LAUGHLIN

F. H. PANNILL

STUBBEMAN, MCRAE, SEALY & LAUGHLIN,
Of Counsel,
P. O. Box 670, Midland, Texas.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copy of the above Reply of Daryl Davis, D. A. Ross, El Capitan Oil Company and Lone Star Producing Company to Petition for Certiorari was sent by United States Mail, postage prepaid, to attorney for Petitioner by sending the same to J. M. Chandler, P. O. Box 2018, Fort Worth, Texas, this 29th day of March, 1961.